IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Kabul Singh & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1114/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 20-8-2002 in Sessions Case No.29/1999 passed by Shri Banwari Lal Sharma, RHJS, Additional Sessions Judge Behror District Alwar.

Date of Judgment: April 12, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. S.R.Bajwa, Senior Counsel] for appellants.
Mr. V.R.Bajwa]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants, six in number, were put to trial before the learned Additional Sessions Judge Behror District Alwar. Learned Judge vide judgment dated August 20, 2002 convicted and sentenced the appellants as under:-

Kabul Singh, Jai Dayal, Maya Devi, Suman Devi and Bhagwat:
U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for six months.

U/s.148 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.200/-, in default to further suffer simple imprisonment for one month.

U/s.323/149 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs.100/-, in default to further suffer simple imprisonment for fifteen days.

U/s.325/149 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer simple imprisonment for two months.

U/s.341 IPC:

Each to suffer simple imprisonment for one month and fine of Rs.100/-, in default to further suffer simple imprisonment for fifteen days.

Madan Lal:

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.10000/-, in default to further suffer simple imprisonment for one year.

U/s.148 IPC:

To suffer rigorous imprisonment for two years and fine of Rs.200/-, in default to further suffer simple imprisonment for one month.

U/s.323/149 IPC:

To suffer rigorous imprisonment for three years and fine of Rs.100/-, in default to further suffer simple imprisonment for fifteen days.

U/s.325/149 IPC:

To suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer simple imprisonment for two months.

U/s.341 IPC:

To suffer simple imprisonment for one month and fine of Rs.100/-, in default to further suffer simple imprisonment for fifteen days.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Mamraj (Pw.3) submitted written report (Ex.P-1) at Police Station Behror on March 4, 1999 to the effect that his neighbours Kabul Singh and Jai Dayal had encroached upon the way to his house by putting tree-branches and twigs. The encroachment was removed with the help of village Panchas in the morning. Thereafter around 12.30 PM when Amar Singh came out of house in order to take bath he was assaulted by Madan. On hearing cries of Amar Singh, informant and other family members came out and saw that Kabul and Jaidayal were armed with Pharsis and Mayadevi, Vinod, Suman, Simla, Manjudi and Bhagwat were having lathis. As soon as complainant party came out, the accused persons opened assault, Madan inflicted Pharsi-blow on the head of Mamraj, Jaidayal gave a Pharsi-blow on his left ear and Kabul dealt a blow on his left hand. In the assault Amar Singh, Maya Devi and Manju received injuries and Amar Singh became unconscious. Injured persons were removed to the hospital. On that report case was registered and investigation commenced. During the course of investigation Amar Singh succumbed to his injuries therefore section 302 IPC came to be added. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Behror District Alwar. Charges under sections 148, 302, 302/149, 325, 324, 323/149 and 341 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 21 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. One witness in defence was however examined. On hearing final submissions learned trial Judge convicted and sentenced the appellant as indicated herein above.

3. We have heard the rival submissions and scanned the material on record.

4. Injuries sustained by Amar Singh were examined vide Injury Report (Ex.P-26), following injuries were found on his person:-

1. Incised wond 6” x 1” Brain deep over scalp extending from left fronto parietal region upto right parietal region.
2. Bruise 3” x 1” on antern aspect of left thigh
3. Abrasion 1½ x ¾ on lateral aspect of left ankle.
4. Abrasion 1” x ¼” on lateral aspect of right wrist.

Autopsy Surgeon in the post mortem report (Ex.P-22) opined that cause of death of deceased Amar Singh was coma brought about as a result of injuries to skull and brain.

5. At the outset we proceed to scan the site plan of the place of incident (Ex.P-3). In front of house of informant Mamraj at Mark `A' appellant Madan inflicted injury on the person of Amar Singh but no blood was found at that place. Land which was in possession of appellant Kabul Singh was shown by boundry Mark `D'. It appears that the incident occurred all of a sudden because of the boundaries that were determined by the Panchayat.

6. Smt. Maya (Pw.1) deposed as under:-

"कबूल ने रास्ते में डंडी लगा रखी थी। वो हमारा रास्ता था। सरपंच ने उसका फैसला करवा दिया। फिर इन्होने रास्ता खोल दिया।"

In the answer to the court question Maya stated:-

"मेरे लडके अमर सिंह के साथ मारपीट हमारे मकान से निकलते ही नहीं हुई मीनाराम के मकान

के पास हुई..."

7. Manju (Pw.2) in her cross examination stated that after hearing cries of Amar Singh She came out of the house. Thereafter Maya and Mamraj followed her.

8. Mamraj (Pw.3) deposed as under:-

"हमारे आने जाने के रास्ते में कबूल ने डंडियां लगा दी। फिर पंचायत को बुलाकर हमने हटा दी।"

9. It also appears that appellant Madan also sustained injuries and his injuries got examined vide injury report Ex.D-5.

10. From the attending circumstances it is revealed that the accused and members of the complainant party were the neighbours and the incident occurred all of a sudden. The information about the incident was communicated to Police Station Behror on telephone which was recorded in Rojnamcha (Ex.P-37A) thus:-

"जरिए टेलीफोन अज्ञात व्यक्ति ने अपना नाम पता बताए बिना थाना बहरोड पर सूचना दी कि ग्राम खापरिया के हरिजनों में आपस में रास्ते की बात को लेकर झगडा हो गया है। जिसमें दो तीन आदमियों के चोट आई है।..."

11. It is no doubt true that Maya, Manju and Mamraj were badly injured in the free fight but it could not be established beyond reasonable doubt that as to who caused the injuries to whom. In these circumstances over implication of Kabul Singh, Jai Dayal, Maya Devi, Suman Devi and Bhagwat can not be ruled out. Since complainant party also used weapons in the free fight as a result of which appellant Madan Lal sustained injuries, the appellants could not have been convicted with the aid of Section 149 and

148 IPC.

12. The injuries sustained by the deceased in the course of sudden and free fight resulted in his death therefore it cannot be said that appellant Madan Lal, who inflicted only one injury to the deceased, acted in cruel or unusual manner and the case against Madan Lal comes within the purview of Exception 4 of Section 300 IPC.

13. For these reasons, we dispose of instant appeal in the following terms:-

(i) We allow the appeal of appellants Kabul Singh, Jai Dayal, Maya Devi, Suman Devi and Bhagwat and set aside their conviction under sections 148, 325/149, 302/149, 323/149 and 341 IPC and acquit them of the said charges. These appellants are is on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellant Madan Lal and instead of section 302 we convict him under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period more than 6 years the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We however acquit the appellant Madan Lal of the charges under sections 148, 325/149, 323/149 and 341 IPC. The appellant Madan Lal, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(iii)The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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